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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/775,466

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Meghan M. Barni

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EXAMINER

JARRETT, SCOTT L

ART UNIT

PAPER NUMBER

3624

NOTIFICATION DATE

DELIVERY MODE

01/26/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@davidjudson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,466	<b>Applicant(s)</b> BARNI, MEGHAN M.	
	<b>Examiner</b> SCOTT L. JARRETT	<b>Art Unit</b> 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **37 CFR § 1.105 - Requirement for Information**

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to complete the background description in the disclosure by documenting Applicant's prior product and/or services, specifically as it relates to enabling users and/or business to perform schedule bidding.

The information is required to identify products and services embodying the disclosed subject matter of schedule bidding and identify the properties of similar products and services found in the prior art.

In response to this requirement, please provide the citation and a copy of each publication which any of the applicants authored or co-authored and which describe the disclosed subject matter of schedule bidding.

In response to this requirement, please provide the citation and a copy of each publication that any of the applicants relied upon to develop the disclosed subject matter that describes the applicant's invention, particularly as to developing (schedule bidding). For each publication, please provide a concise explanation of the reliance placed on that publication in the development of the disclosed subject matter.

In response to this requirement, please provide the names of any products or services that have incorporated the claimed subject matter.

In response to this requirement, please state the specific improvements of the claimed subject matter in the claims over the disclosed prior art and indicate the specific elements in the claimed subject matter that provide those improvements. For those claims expressed as means or steps plus function, please provide the specific page and line numbers within the disclosure which describe the claimed structure and acts.

In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.

The fee and certification requirements of 37 C.F.R. § 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 C.F.R. § 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement

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under 37 C.F.R. § 1.105 are subject to the fee and certification requirements of 37 C.F.R. § 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is an attachment of the enclosed Office action. A complete response to the enclosed Office action must include a complete response to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action, which is 3 months.

### **DETAILED ACTION**

1. This Non-final Office Action is in response to Applicant's amendment filed December 2, 2008. Applicant's amendment amended claims 1-9. Currently claims 1-9 are pending.

#### ***Response to Amendment***

2. The declaration filed on December 2, 2008 under 37 CFR 1.131 is sufficient to overcome the Narasimhan et al. reference.

The 35 U.S.C. 101 rejection of claims 1-8 in the previous office action is withdrawn in response to Applicant's amendments to claims 1-8.

#### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Objections***

4. Claims 1-9 are objected to because of the following informalities.

Regarding Claim 1, Claim 1 recites "*enabling* each of a set of entities, to use the client computer", however the each set of the entities does not actually use the client computer to identify a given schedule pattern and one or more bids as current claimed. For the purposes of examination examiner assumes the applicant will amend the claim

to recite that each of the set of entity actually uses the client computer to identify a given schedule pattern and one or more bids.

Appropriate correction is required.

Regarding Claim 2, Claim 2 recites "*enabling* the given entity to...", however the each the given entity does not actually identify a set of sorting preferences associated with the given pattern set as claimed. For the purposes of examination examiner assumes the applicant will amend the claim to recite that the given entity actually identifies a set of sorting preferences associated with the given pattern set.

Appropriate correction is required.

Regarding Claim 3, Claim 3 recites "*enabling* an entity to identify a new give schedule...", however the entity does not actually identify a new given schedule pattern or an associated set of sorting preferences as claimed. For the purposes of examination examiner assumes applicant will amend the claim to read that the entity actually identifies a new schedule pattern and an associated set of sorting preferences for the purpose of examination.

Appropriate correction is required.

Regarding Claim 4, Claim 4 recites "enabling an enetity to select a different pattern set and to identify a set of one or more bids...." however, the entity does not actually select a different patter set or identify one or more bids as currently claimed.

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For the purposes of examination examiner assumes applicant will amend the claims to read that the entity actually selects a different schedule patten set and identify a set of one or more bids associated with the different schedule pattern.



***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim s1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stannard, U.S. Patent No. 4,845,625 in view of O'Brien, U.S. Patent no. 6,587,831.

Regarding Claims 1 and 9 Stannard teaches a method and apparatus operative in a work environment wherein entities to be scheduled each access a computer network using a client computer (Column 11, Lines 24-40; Figures 1, 4a), comprising:

- during a period of time each of a set of entities (e.g. flight personnel, system) irrespective of their seniority or ranking (priority, status, etc.) in the work environment (Stannard provides for all employees to define their bid/schedule priorities and preferences *irrespective* of the employees seniority or priority. While Stanndard does teaches that schedules *maybe assigned* to employees based on seniority/priority (Column 1, Lines 23-25) as a means for providing a seniority bias for schedule assignments this is vastly different from enabling employees to identify schedules/bids based on seniority/priority which Stannard and O'Brien clearly do not teach or suggest; Column 1, Lines 37-55) to use the client computer to:

- identify a given schedule pattern set (Column 1, Lines 37-55); and

- identify one or more bids (offers, trades, etc.) with respect to one more schedules associated with the given schedule pattern set (Column 1, Lines 7-25; 37-47; Column 10, Lines 30-5);
- at the close of the time period, selecting a given set of the entities for scheduling with respect to the given schedule pattern set (Column 1, Lines 1-25, Column 11, Lines 24-41); and
- assigning the given set of entities to one or more (candidate) schedules associated with the give pattern set (Column 1, Lines 1-25, Column 11, Lines 24-41).

Stannard further teaches that the method and apparatus comprises a processor and code executable by the processor to implement the method steps (Figure 1).

While Stannard teaches that the method and apparatus for schedule bidding occurs during various period of time/periodically Stannard does not expressly teach a *given* period of time as claimed.

O'Brien teach a given time period for scheduling bidding and assignment (open/close, bidding period; Column 8, Lines 1-5; Claims 1k; 2kl) in an analogous art of entity scheduling.

More generally O'Brien teaches method and apparatus for schedule bidding comprising during a given time period (open/close) a set of entities using a client computer to identify a given schedule pattern set and to identify one or more bids with respect to one or more schedules associated with the given schedule pattern set

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(schedule templates, shift patterns; Column 2, Lines 6-15; Column 3, Lines 64-68; Column 7, Lines 53-68; Column 8, Lines 1-36; Figure 6) and assign a given set of entities to one or more schedules associated with the schedule pattern set (Column 1, Lines 44-56; Column 4, Lines 45-68; ).

O'Brien further teaches sorting/ranking bids (Column 8, Lines 17-37).

It would have been obvious to one skilled in the art at the time of the invention that the method and apparatus for scheduling entities as taught by Stannard would have benefited from utilizing a give time period for the schedule bidding process in view of the teachings of O'Brien, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 2 Stanndard teach a method further comprising an entity identifying a set of sorting preferences ("preferences and priorities") associated with the given schedule pattern set (Column 1 Lines 37-59; Column 3, Lines 20-65; Column 6; Column 10, Lines 64-68).

Regarding Claim 3 Stannard teaches a method further comprising an entity identifying a new given schedule pattern set and an associated set of sorting

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preferences during the given time period (Column 3, Lines 20-30; Column 5, Lines 63-68; Column 6).

Regarding Claim 4 Stannard teaches a method further comprising an entity selecting a different schedule pattern set and identifying a set of one or more bids associated with the different schedule pattern during the given time period (Column 1, Lines 38-47; Column 3, Lines 20-30, 54-59).

Regarding Claim 5 Stannard teaches a method and apparatus wherein entities (e.g. flight personnel) define a priorities (ranking method) and preferences for schedule bids ("preferences and priorities"; Column 1, Lines 40-59; Column 3, Lines 20-65; Column 5, Lines 63-68; Column 6, Lines 1-10) and an entity (the system/apparatus) ranks (sorts, matches, recommends) the schedule bids based on the entities (flight personnels') ranking/prioritization preferences (Column 2, Lines 9-24; Column 6, Lines 13-20) – substantially the same as applicant's invention as disclosed in paragraphs 11 and 92.

Stannard further teaches that scheduling bidding, by employees, is old and very well known (Column 1, Lines 7-9).

While Stannard teaches that the method/apparatus ranks the schedule bids based on the flight personnel's priorities and preferences Stannard does not expressly

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teach that the entity of claim 1 (i.e. the flight personnel of Stannard) rank one or more bids associated with the given schedule pattern set as claimed.

Official notice is taken that entities ranking bids, using any number of ranking, sorting, or prioritization rules, approaches, or techniques, is old and very well known. For example a homeowner selling their home may receiving multiple bids (offers) for there house wherein the homeowner may rank the bids based on any number of criteria including but not limited to move-in date, offer amount, down payment, or any other of a plurality of terms of the sale.

It would have been obvious to one skilled in the art at the time of the invention that the method and apparatus as taught by Stannard with its ability to enable entities (flight personnel, managers, etc.) to define their own bid ranking/prioritization preferences would have benefited from enabling entities to rank one or more bids associated with a schedule in view of the teachings of official notice, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 6 Stannard teaches a method further comprising automatically ranking (sorting, prioritizing) the one or more bids associated with the given schedule pattern set (Column 1, Lines 39-47; Column 2, Lines 9-24; Figure 4a).

Regarding Claim 7 Stannard teaches a method and apparatus further comprising assigning a schedule to at least one entity that did not provide a bid for any (candidate) schedules associated with the given schedule pattern set (Column 1, Lines 55-59; Column 10, Lines 15-34, 63-68).

Regarding Claim 8 Stannard does not expressly teach that the method/apparatus further comprises deselecting a given set of entities for schedule with respect to the given schedule pattern set as claimed.

O'Brien teaches deselecting (selecting, flagging, marking, preselecting, etc.) a given set of entities for schedule with respect to the given schedule pattern set (Column 4, Lines 65-68; Column 5, Lines 1-7; Column 7, Lines 39-51; ) in an analogous art of entity scheduling.

It would have been obvious to one skilled in the art at the time of the invention that the method and apparatus as taught by Stannard would have benefited from deselecting a given set of entities for schedule with respect to the given schedule pattern set in view of the teachings of O'Brien, since the claimed invention is merely a

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combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

### ***Conclusion***

This Office action has an attached requirement for information under 37 C.F.R. § 1.105. A complete response to this Office action must include a complete response to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Pachon et al., U.S. Patent No. 7,379,887, teach a system and method for entities to bid on schedules.
- Kraemer et al., U.S. Patent Publication No. 2002/0052773 teach a system and method for entity scheduling wherein one or more entities are excluded (deselected) from being scheduled/assigned.
- Ossip et al., U.S. Patent Publicaiton No. 2003/0018509, teach a system and method for assigning entities to schedules.
- WhenToWork.com Web Pages (2001), teaches an online system and method for scheduling bidding wherein employees identify and bid on schedule pattern sets and are assigned to schedules/shifts using a plurality of assignment algorithms and based on employee preferences and business rules/constraints including but not limited to "everyone being equal", seniority or by priority group.



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- PrimeTime F&S (1997-1998) teaches a system and method for scheduling (assigning) employees into one or more schedule pattern sets based on business rules/constraints and employee preferences.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT L. JARRETT whose telephone number is (571)272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott L Jarrett/  
Primary Examiner, Art Unit 3624